

DEPARTMENT OF JUSTICE
SB 189 would severely restrict the Attorney General's ability
to act on behalf of Montana Consumers

Background

The Attorney General represents the state and its citizens in a number of different capacities:

- In litigation such as the School Funding case, the Attorney General defends laws enacted by the **Legislature**.
- In litigation such as the PPL case involving rents for the use of State trust lands, the Attorney General brings the case on behalf of the State or a specific **Department** to protect the State's sovereign interests.
- In consumer protection litigation, the Attorney General brings the case on behalf of the **Citizens of the State of Montana**.

The capacity in which the Attorney General is acting shapes the expected outcome of the litigation. For actions on behalf of the state or a state agency, the expectation is that the recovery will go to that agency or be dedicated to the program for which the Attorney General brought the action. For actions on behalf of the citizens, the expectation is that the recovery will go back to, or benefit, those citizens.

Consumer Protection Cases

Consumer protection cases are not all the same.

- Some affect only one **individual** by, for example, successfully reversing \$26,418 in credit charges for an elderly woman living on Social Security who participated in a "get-rich-quick" online scam.
- Other cases affect a **much larger sector of our citizens**. For example, the Attorney General participated in a deceptive advertising practices action brought against Caremark, a pharmaceutical benefit management company. Caremark had persuaded doctors to switch patients to different brands of drugs by telling them that switching drugs would save their patients money, when in fact, the new drugs may have been more costly. The real reason Caremark wanted them to switch was because the company was getting secret rebates from the drug manufacturers. The Caremark litigation not only ended this harmful practice, but resulted in a recovery of \$485,000.

For such larger cases, the lawsuit is brought to stop a specific illegal action and the cash recovery is intended as compensation for injuries suffered by Montana consumers.

The Office of Consumer Protection has strived to identify individual consumers who have been harmed and who should receive reimbursement for the unlawful conduct identified in litigation brought by the Attorney General. In many cases involving large settlements, however, it is impossible, as a practical matter, to identify and locate individual consumers who have been injured by the unlawful conduct.

Funds restricted by settlement

Many settlements make special provision for cases in which specific individuals cannot be identified. These settlements include language requiring that in cases where the Office of Consumer Protection cannot identify individual injured consumers, the benefit must go to a group that closely resembles those for whom the suit was originally filed.

For instance, the Caremark settlement required that the Office of Consumer Protection use the settlement funds obtained "to benefit low income, disabled, or elderly consumers of prescription medications, or to fund other programs reasonably targeted to benefit a substantial number of persons affected" by the unlawful conduct. Consumer Protection fulfilled the terms of this settlement by making grants of settlement proceeds to health care providers across the state that provide services to uninsured Montana consumers.

Harmful Effects of SB 189

SB 189 would require that any settlement funds recovered from consumer protection actions that could not be distributed to the injured individuals within one year must be deposited in the general fund. However, the purpose of these cases is not to benefit the general fund, but to compensate consumers for an injury that a company caused.

The bill fails to advance the interests of Montana consumers because it:

- will divert funds intended for specific purposes that benefit specific Montana citizens to the general fund where they will be used not for the benefit of injured consumers but for the support of general government programs;
- may prevent the Attorney General from participating in certain settlements; and
- will, for these reasons, limit the protection that the Office of Consumer Protection can provide to classes of consumers who have been harmed by unlawful conduct.

2009 Legislature
March 23, 2009